J-A25021-06

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P. 6537

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|---|---|---|
| CATHERINE J. LAYTON, Appellee | : | IN THE SUPERIOR COURT OF PENNSYLCANIA |
| v | : | |
| JOHN J. HOLLAND, ESQUIRE Appellant | : | No. 498 MDA 2005 |

Appeal from the Order Entered February 24, 2005
In the Court of Common Pleas, Domestic Reglations Division
Dauphin County, No. 2002-DR-2003; PACSES NO. 864105752

The Court hereby DENIES the application filed November 3, 2006, requesting reargument or reconsideration of the decision dated October 24, 2006.

BEFORE: LALLY-GREEN, TODD, and POPOVICH, JJ.

MEMORANDUM: FILED: October 24, 2006

John J. Holland appeals *pro se* the February 25, 2005 order of the Dauphin County Court of Common Pleas dertermining that Appellant is the biological father of William Skylar Holland Layton, and ordering Appellant to pay child support. In his brief, Appellant, who is an attorney, presents the following issues for review:

I. Whether the trial court's refusal to permit Appellant to secure legal representation deprived the Appellant of due process and legal representation.

II. Were the Appellant's rights to legal counsel and effective assistance of counsel violated?

III. Did the trial court improperly [admit] the DNA tests into evidence without a proper foundation; and whether the Appellant was denied a fair opportunity to challenge the test results?

IV. Whether the Appellant was denied the right to conduct a full and fair cross examination of the Appellee[?]

V. Whether the trial court improperly limited and disregarded the medical evidence and testimony presented by Appellant's expert witnesses?

VI. Whether the Appellee failed to meet the burden of proof necessary to establish paternity?

VII. Whether the evidence supports a finding of paternity?

VIII. Is the trial court's decision binding, and may the appellate court reverse the verdict?

(Appellant's Brief at 3-4.)

Following our review of the parties' briefs, the applicable case law, and the April 26, 2005 opinion of the Honorable Bruce F. Bratton, a copy of which attached hereto, we find that Judge Bratton congently addressed and

rejects Appellant's argument challenging the sufficiency of the evidence in support of a finding of paternity. Thus, we reject Appellant's claims for the reasons expressed by Judge Bratton. We further agree with the trial court that Appellant's other issues, including his argument that he was denied his right to effective legal counsel and a full and fair examination of Appellee, and his challenges to the evidentiary rulings of the trial court, are without merit. Accordingly, we affirm the trial court's order.

Order AFFIRMED.

Judgement Entered:

James D. McCullough

Deputy Prothonotary

Date: October 24, 2006

# APPENDIX E

166a

| | | |
|---|---|---|
| CATHERINE J. LAYTON,<br>Plaintiff | : | IN THE COURT OD<br>COMMON PLEAS,<br>DAUPHIN COUNTY,<br>PENNSYLVANIA |
| v. | : | |
| | : | DOCKET NO.<br>2002-DR-2003<br>PACSES NO.<br>864105752 |
| JOHN J. HOLLAND,<br>Defendant | : | |

MEMORANDUM PURSUANT TO pa.R.A.P. 1925(a)

On December 21, 2004 and January 3, 2005, hearings were held to establish paternity for William Skylar Holland Layton ("child"), born August 22, 2003, to Plaintiff Catherine J. Layton. After hearinf all the evidence presented and reviewing the documents filed, this Court concluded by Order dated February 9, 2004, that Defendant, John J. Holland, was the biological fther of the child. Pursuant to Pa.R.A.P. 1925(a), we have filed this opinion outlining the reasons for our Order.

By way of background, we present the following facts and procedural history:

On August 28, 2003, Plaintiff filed a complaint for support against Defendant for the child. Plaintiff and child appeared for paternity testing on January 16, 2004. The paternity test reports indicated a 99.99 percent probability of paternity that Defendant cannot be excluded as the biological father of the child.

On March 24, 2004, Plaintiff filed a motion to establish paternity for the child. In response, Defendant filed an answer and a cross-motion to enagage in discovery claiming

I hereby certify that the foregoing is a true and correct copy of the original filed. 2-22-05

the paternity test was faulty for various reasons and suggesting other men were the father of the child. On April 14, 2004, a hearing was held, whereby Defendant failed to provide evidence of any type that the DNA paternity tersts were unreliable. At the proceedings, Plaintiff agreed to participate in a second paternity test. The second paternity test indicated the exact same results of the first paternity test. On September 3, 2004, a support order was entered against Defendant.

At the paternity hearing, Plaintiff testified she had had sexual relations with Defendant near the time of conception of the child and did not have sexual relations with other men during that time. Defendant denied the sexual relations with Plaintiff and only stipulated to three sexual encounters with Plaintiff during September of 2002.

Defendant claimed to have had a vasectomy nine months prior to having sexual relations with Plaintiff. Defendant's only evidence of the vasectomy was a signed affidavit by the doctor, Dr. Parsick who is now deceased, who allegedly performed the surgery. Defendant's brother testified that he drove Defendant to the surgery. Another witness, Dr. Zaloga, a doctor specializing in kidneys and Defendant's close personal friend, testified that Defendant did produce a sperm count of zero in a test he had ordered after the two paternity tests in 2004 were completed. Dr. Zaloga stated that he only learned of the alleged vasectomy shortly before the sperm test was conducted.

Defendant challenges the establishment of paternity naming him as the biological father of the child. Paternity law requires a two-part approach to establish paternity. Spawv. Springer. 715 A.2d 1188,1189 (Pa. Super. 1998). First, the plaintiffs burden of proof is the preponderance of evidence and usually met by testifying to the conception of the child. Id. Second, Defendant's burden is to rebut that evidence with clear and convincing evidence by showing non-access, sterility, or flawed paternity testing procedures. Id. Clear and convincing evidence is the highest burden in our civil law and requires that the fact-finder be able to

come to clear conviction, without hesitancy, of the truth of the precise fact in issue. Id. Genetic test results indicating a 99 percent probability of paternity create a presumption that the alleged father is father of the child and shifts the burden to Defendant to rebut the reliability of those results. 23 Pa.C.S. § 4343(c)2. Here, Plaintiff presented two separate genetic test results which both indicated a 99.99 percent probability that Defendant cannot be excluded as the biological father of the child.

Defendant did not rebut that evidence with clear and convincing evidence by showing non-access, sterility, or flawed paternity testing procedures. Defendant attempted to prove sterility by offering a signed affidavit of Dr. Parsick, which Defendant allegedly recovered from the deceased doctor's records, stating that he had performed a vasectomy upon Defendant However, Defendant failed to produce any other medical records of such earlier surgical procedure and Defendant acknowledged that Dr. Parsick was a personal and business friend with whom he had a very close relationship. The semen analysis, showing that Defendant had a sperm count of zero, was performed after the birth of the child. There was no documentation of this procedure to support that Defendant had indeed received the surgery prior to the conception of the child.

Furthermore, Dr. Zaloga, a nephrologist and Defendant's close friend, also testified that despite his close relationship with Defendant, he knew nothing of Dr. Parsick's alleged vasectomy, therefore casting further doubt on the affidavit's credibility. We cannot come to a clear conviction based on such incomplete evidence presented by Defendant that he was indeed sterile at the time of conception of the child.

Thus, Defendant did not rebut the genetic test results with clear and convincing evidence of sterility.

Defendant also claimed non-access to Plaintiff during the possible period of conception because he was not in the same geographical part of the state as Plaintiff. However, Defendant does admit to sexual relations with Plaintiff on

other occasions and meetings with Plaintiff on Sundays. Furthermore, Plaintiff testified that she had sexual relations with Defendant for two weeks before the conception of the child and spermicidal cream was used at Defendant's suggestion, further calling into question the allegation of sterilization surgery earlier that year. Therefore, we did not find, after reviewing Defendant's testimony, that Defendant has shown clearly and convincingly that he had no access to Plaintiff. Since Defendant did not prove with clear and convincing evidence non-access or sterility, Defendant failed to rebut the presumption that Defendant is the father of the child.[1]

26 April 05

Date

Bruce F. Bratton, Judge

Distribution:
The Honorable Bruce F. Bratton
Sheila D. Britt, Esq., Domestic Relations Office
John J.Holland, P.O. Box 144, Taylor, PA 18517

1 We also note that Defendant offered no evidence whatsoever to support a claim that the paternity testing procedures were flawed. Furthermore, we find no merit to any claim in the litany of issues Defendant presents in his Statement of Matters Complained Of On Appeal.

# APPENDIX F

2-24-05



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|---|---|---|
| CATHERINE J. LAYTON,<br>Plaintiff | : | IN THE COURT OD<br>COMMON PLEAS,<br>DAUPHIN COUNTY,<br>PENNSYLVANIA |
| v. | : | |
| | : | DOCKET NO.<br>2002-DR-2003<br>PACSES NO.<br>864105752 |
| JOHN J. HOLLAND,<br>Defendant | : | |

DAUPHIN COUNTY
DOMESTIC RELATIONS
FEB 24 9 07 AM '05

## ORDER

AND NOW, this 23rd day of February 2005, following the hearing held in this matter on December 21, 2004 and January 3, 2005, and upon consideration of the briefs submitted by both parties, it is hereby ORDERED and DECREED that Defendant, John J. Holland, is the biological father of William Skylar Holland Layton, born August 22, 2003 to Catherine J. Layton. This matter is remanded to the Domestic Relations Office for further proceedings, if any are necessary.

BY THE COURT:

Bruce F. Bratton, Judge

Distribution:

The Honorable Bruce F. Bratton

Sheila D. Britt, Esq., Domestic Relations Office

John J.Holland, P.O. Box 144, Taylor, PA 18517

# APPENDIX G

| | | |
|---|---|---|
| CATHERINE J. LAYTON,<br>Plaintiff | : | IN THE COURT OD<br>COMMON PLEAS,<br>DAUPHIN COUNTY,<br>PENNSYLVANIA |
| v. | : | |
| | : | DOCKET NO.<br>2002-DR-03<br>PACSES NO.<br>864105752 |
| JOHN J. HOLLAND,<br>Defendant | : | |

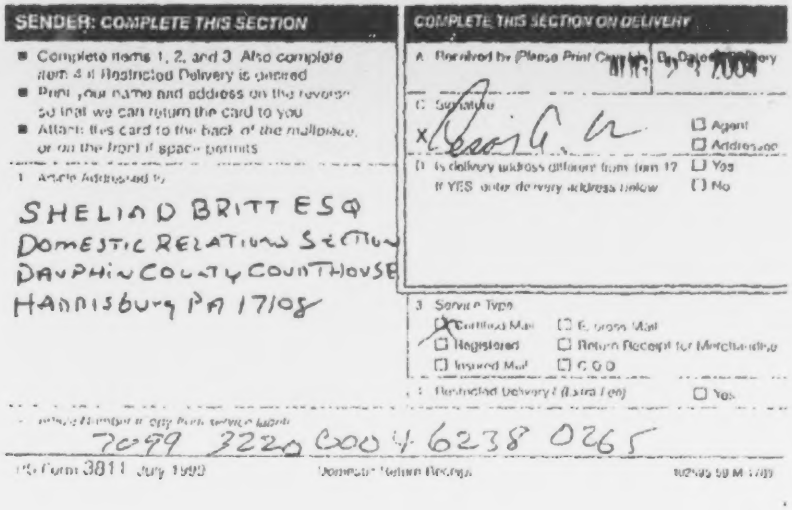
NOTICE OF DEFENDANT'S OBJECTIONS TO DNA TESTS

You are hereby provided notice that pursuant to 23 Pa. C.S.A. §4343(c)(3), defendant objects to the admission of the DNA laboratory reports. Proper foundation, authentication and proof of accuracy shall be demanded at trial.

Date: August 20, 2004

John J. Holland, Esquire
P.O. Box 144
Taylor, PA 18517

13a



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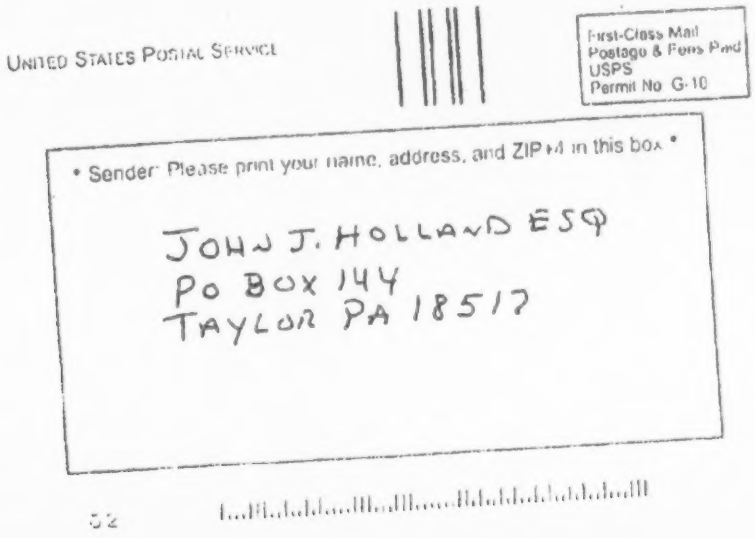
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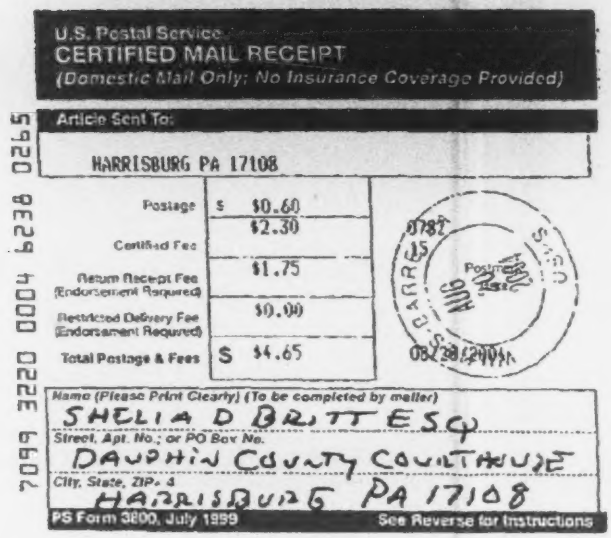

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City, State, ZIP+4
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